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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,398	12/17/2004	Cristiano Casale	034170-026	8007
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EXAMINER JACYNA, J CASIMER				
ART UNIT		PAPER NUMBER		
3754				
NOTIFICATION DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

# Office Action Summary

**Application No.**

10/518,398

**Applicant(s)**

CASALE ET AL.

**Examiner**

J. Casimer Jacyna

**Art Unit**

3754

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5 and 10-12 is/are allowed.
- 6) ☒ Claim(s) 6, 8, 9, 13 and 15 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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1. The indicated allowability of claims 13 and 15 are withdrawn in view of the newly discovered reference(s) to Roman and Miani et al. Rejections based on the newly cited reference(s) follow.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 7-40982 and Miani et al. (2002/0179605). Bernstein discloses an opening device including a frame 80, a pierceable portion of a package 48, a threaded cap 70, a cutting member 90, a first connecting means 74, 94, second connecting means 82, 92 and a plurality of teeth 96, any one of which could be a main blade or a first tooth substantially as claimed but does not disclose the teeth to decrease in height nor an elongated auxiliary blade. However, Japan teaches another package opening device having the teeth 231 decrease in height as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with decreasing teeth height as, for example, taught by Japan in order to enhance the piercing of the package. Miani teaches another package opening device having an auxiliary blade 45 that is about 3 times the width of the blades 46 as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to provide the device of Bernstein with an elongated auxiliary blade as, for example, taught by Miani in order to enhance the piercing of the package.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 11-171233 and Miani et al. (2002/0179605). Bernstein discloses an opening device including a frame 80, a pierceable portion of a package 48, a threaded cap 70, a cutting member 90, a first connecting means 74, 94, second connecting means 82, 92 and a plurality of teeth 96, any one of which could be a main blade or a first tooth substantially as claimed but does not disclose the teeth to decrease in height nor an elongated auxiliary blade. However, Japan teaches another package opening device having the teeth 32 decrease in height as claimed for the purpose of enhancing the piercing of the package as discussed in the specification, shown in figure 4 and also discussed in paragraph 8 of Berman (2007/0062709). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with decreasing teeth height as, for example, taught by Japan in order to enhance the piercing of the package. Miani teaches another package opening device having an auxiliary blade 45 that is about 3 times the width of the blades 46 as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with an elongated auxiliary blade as, for example, taught by Miani in order to enhance the piercing of the package.

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5. Claims 15 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 7-40982 and Roman (6,077,021).

Bernstein discloses an opening device including a frame 80, a pierceable portion of a package 48, a threaded cap 70, a cutting member 90, a first connecting means 74, 94, second connecting means 82, 92 and a plurality of teeth 96, any one of which could be a main blade or a first tooth substantially as claimed but does not disclose the teeth to decrease in height nor a main blade with a backward slope. However, Japan teaches another package opening device having the teeth 231 decrease in height as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with decreasing teeth height as, for example, taught by Japan in order to enhance the piercing of the package. Roman teaches another package opening device having the teeth 28 and 28' that have either a forward or a backward slope as discussed with respect to the angles in figures 2A and 2B as claimed apparently for the purpose of enhancing the piercing of the package.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with a backward slope on any one of the teeth as, for example, taught by Roman in order to enhance the piercing of the package.

6. Claims 15 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 11-171233 and Roman (6,077,021).

Bernstein discloses an opening device including a frame 80, a pierceable portion of a

package 48, a threaded cap 70, a cutting member 90, a first connecting means 74, 94, second connecting means 82, 92 and a plurality of teeth 96, any one of which could be a main blade or a first tooth substantially as claimed but does not disclose the teeth to decrease in height nor a main blade with a backward slope. However, Japan teaches another package opening device having the teeth 32 decrease in height as claimed for the purpose of enhancing the piercing of the package as discussed in the specification, shown in figure 4 and also discussed in paragraph 8 of Berman (2007/0062709).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with decreasing teeth height as, for example, taught by Japan in order to enhance the piercing of the package. Roman teaches another package opening device having teeth 28 and 28' that have either a forward or a backward slope as discussed with respect to the angles in figures 2A and 2B as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with a backward slope on any one of the teeth as, for example, taught by Roman in order to enhance the piercing of the package.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 7-40982 and Roman (6,077,021) as applied to claim 6 above and further in view of Miani et al. (2002/0179605). Bernstein discloses an opening device substantially as claimed but does not disclose an elongated auxiliary blade. However, Miani teaches another package opening device

having an auxiliary blade 45 that is about 3 times the width of the blades 46 as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with an elongated auxiliary blade as, for example, taught by Miani in order to enhance the piercing of the package.

8. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein et al. (5,960,992) in view of Japan 11-171233 and Roman (6,077,021) as applied to claim 6 above and further in view of Miani et al. (2002/0179605). Bernstein discloses an opening device substantially as claimed but does not disclose an elongated auxiliary blade. However, Miani teaches another package opening device having an auxiliary blade 45 that is about 3 times the width of the blades 46 as claimed apparently for the purpose of enhancing the piercing of the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Bernstein with an elongated auxiliary blade as, for example, taught by Miani in order to enhance the piercing of the package.

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

10. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 2-5 and 10-12 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-

4889. The examiner can normally be reached on Wed. thru Fri. 9AM-7PM, Mon. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/

Primary Examiner, Art Unit 3754